

Exhibit 1

AFFIDAVIT OF MICHAEL L. MASCARELLO, ESQ. PURSUANT F.R.C.P. 56(d)

STATE OF NEVADA)
)ss.
COUNTY OF CLARK)

I, MICHAEL L. MASCARELLO, being first duly sworn, according to the law, depose and say with personal knowledge:

1. That I am an attorney duly licensed to practice in the State of Nevada and the United States District Court, District of Nevada and counsel for the Plaintiff.
2. That on October 10, 2012, Plaintiff filed the Complaint in this matter.
3. That on January 17, 2013, Defendants filed their Answer to the Complaint.
4. That on February 27, 2013, the parties participated in a Case Management Conference.
5. Plaintiff and Defendants provided their initial disclosures of witnesses and documents on March 8, 2013.
6. Other than exchanging initial 26(f) disclosures, no additional discovery has taken place to date.
7. In their motion to dismiss, Defendants have included matters outside the pleadings and have attached numerous exhibits and documents, including the affidavits of Norman Mahlberg, and Defendants, Mike Altenburg, and Jack French. Thus, Defendants' the motion must be treated as one for summary judgment under FRCP 56.
8. Plaintiff must be given a reasonable opportunity to present all the material that is pertinent to the motion and at this early stage in the litigation, Plaintiff has not had any opportunity to gather and present facts to show there are genuine issues of material fact for trial.
9. Plaintiff intends on conducting discovery, including propounding interrogatories and requests for production of documents, and taking the depositions of the Defendants and any other witnesses that have information pertinent to Plaintiff's claims.

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10. It is impossible for Plaintiffs to adequately respond to a motion for summary judgment until said discovery has been completed. For that reason, Plaintiffs request that this Court deny summary judgment pursuant to FRCP 56(d).

FURTHER AFFIANT SAYETH NAUGHT

Dated this 5 day of April, 2013.


MICHAEL L. MASCARELLO, ESQ.

SUBSCRIBED and SWORN to before
me this 5 day of April, 2013


NOTARY PUBLIC

